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IN THE

Supreme Court of the United States

OCTOBER TERM, 1942.

No. 345

NATIONAL HOSPITAL SERVICE SOCIETY, INC., *Petitioner,*

v.

ALBERT F. JORDAN, Superintendent of Insurance, Government of the District of Columbia, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA AND BRIEF IN SUPPORT THEREOF.

CORNELIUS H. DOHERTY,
Counsel for Petitioner.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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ALBERT F. JORDAN, Superintendent of Insurance, Government of the District of Columbia, *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA.

The petition of National Hospital Service Society, Inc., respectfully shows to this Honorable Court:

STATEMENT OF THE CASE.

It is admitted that the petitioner, National Hospital Service Society, Inc., is a corporation which was incorporated under the fraternal laws of the District of Columbia on the 9th day of August, 1935, under the name of "THE UNIVERSAL HOSPITALIZATION SOCIETY, FRATERNAL

ORDER," under and by virtue of the provisions of Section 749, Sub-Chapter 12, Chapter 18 of the Code of Laws for the District of Columbia, and on the 8th day of May, 1936, the name of the corporation was changed to "NATIONAL HOSPITAL SERVICE SOCIETY INCORPORATED."

In September of 1935, a permit was issued by the Superintendent of Insurance for the District of Columbia to the petitioner to do business as a fraternal organization in accordance with Title 5, Section 146 of the Code of the District of Columbia, complete to March 4, 1929, and a yearly permit issued for the years 1936, 1937, 1938 and 1939.

At the trial of this cause petitioner endeavored to rely upon the actions of prior Superintendents of Insurance, and introduced testimony showing that by virtue of the acts of the prior Superintendents of Insurance the Society became indebted in the sum of approximately $39,000.00 for money and services advanced to the Society to take care of outstanding claims of the society and to place it on a firm financial basis.

In the agreed statement of facts, commencing on Page 9 of the Record, the Court refused to receive testimony covering the action of a prior Superintendent of Insurance covering his idea of the Statute and what he had informed Mr. Stover at the time he took over the organization, and upon which representations he and his family put $39,000.00 in cash and services, and the Court stated that petitioner could tender proof, but that it would be excluded, and the petitioner tendered, in substance, the following facts (R. 10-18):

William H. M. Stover testified on behalf of the petitioner, on direct examination, that he was the Secretary and Treasurer of the National Hospital Service Society, Inc., and had first joined the Society on March 8, 1938; that at the time the witness took over the control of the Society it was in a very bad financial condition, but the condition of the Society, insofar as it referred to the ini-

tiation of members, medical examinations, death benefits, lodge and ritualistic work, was practically the same in March of 1938, as it was on the 20th day of May, 1940, when the bill of complaint was filed, and the petitioner had obtained yearly permits to do business as a fraternal organization in the District of Columbia for the years 1935 through April 30, 1940, inclusive; the agreed statement of facts further contains the statement that all throughout the tenure of J. B. Moor as Superintendent of Insurance, which terminated with his death in July of 1939, J. B. Moor approved the status of the Society and issued to it yearly permits, and Albert F. Jordan, the respondent, issued a yearly permit in 1939, after the death of J. B. Moor, for the reason that he felt it would be a little arbitrary for him to refuse when he was convinced that the failure to make application for the license in the early part of the year was inadvertent, and since his predecessor had issued the license in previous years, he felt that J. B. Moor would have issued it at that time, so that rather than be arbitrary about it, he stated he would issue it with the statement that they must show him that they were fraternal before he would renew it.

The witness further stated that, relying on the fact that it was a going concern with a permit, he and members of his family advanced the Society in money and wages approximately $39,000.00, and during that period of time neither he nor any other officer or director received a dime for the services rendered, but that he and his brother received only credit for their services in reckoning this $39,000.00 obligation; that a new certificate was issued after the witness became manager of petitioner and that the better part of this contract was written by the then Superintendent of Insurance, and at the time that the Superintendent helped with the policy he stated that he was not officially permitted to do this thing but that he was trying to help W. H. M. Stover straighten up something that he thought was largely his (J. B. Moor) fault.

That J. B. Moor, the then Superintendent of Insurance, practically supervised the acts of the petitioner while he was the Superintendent of Insurance and wrote a letter, which appears in the statement of evidence, covering the agency contract with the Society (R. 12).

The witness further stated that he was advised to take over the operation of the Society by Mr. Moor and that when he joined the Society it was absolutely in hopeless insolvency, and there was about $300.00 in the cash till and ten or twelve hundred dollars of claims disclosed, and that subsequently it developed that there was about $15,000.00 of claims unpaid, including a very bad reputation throughout the city, and also that the Superintendent of Insurance had knowledge concerning these outstanding claims against the Society, but which he did not disclose to the witness, and the witness identified a slip of scrap paper in the handwriting of J. B. Moor, which showed only claims pending in the sum of $700.00, and that $3,500.00 would be ample to put the institution on a sound financial basis, and that this memo was written about two days before March 8, 1938, when the witness took over, and thereafter advanced $5,000.00; that when he first started checking into the claims against the Society it looked as if the Society owed but $10,000.00 in claims and then it looked like $15,000.00 and then it finally amounted to $25,000.00, although it had only been represented to be approximately $700.00, and that the Society liquidated every just obligation, and the statement of facts contained a letter from J. B. Moor, then Superintendent of Insurance, under date of March 4, 1938, addressed to the Honorable W. S. Hanna, Commissioner of Insurance, at Baltimore, Maryland, in which the Superintendent of Insurance, in effect, states that the Society complied with the fraternal laws of the District of Columbia. (R. 15-17).

That the Society relied upon the acts and the statements of the Superintendent of Insurance and it was not until all the outstanding obligations against the Society were ac-

tually taken care of, and the Society placed on a basis of "pay as you go," that it was refused a permit to do business in the District of Columbia and threatened with prosecution for doing business without having a permit to do so, even though there was no difference in the set-up of the Society between March of 1938 and May of 1940, other than the fact that they were having lodge meetings, and that the Society's financial condition had been greatly improved for the past eighteen months.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

1. The decision of the United States Court of Appeals for the District of Columbia is on a question of general importance and is in conflict with its previous decisions and affects property rights.

2. The decision of the United States Court of Appeals for the District of Columbia presents a question relating to the construction of a Statute of the United States.

3. The decisions of the United States Court of Appeals for the District of Columbia do not give proper effect to the applicable decisions of this Court.

4. The decision of the United States Court of Appeals for the District of Columbia is in conflict with the decisions of other United States Circuit Courts of Appeals.

QUESTIONS PRESENTED.

1. Whether the United States Court of Appeals for the District of Columbia was in error in affirming the judgment of the District Court of the United States for the District of Columbia, in excluding the proffered testimony covering the acts of the prior Superintendents of Insurance.

2. Whether the United States Court of Appeals for the District of Columbia was in error in holding that the respondent, and also the District of Columbia, was not estopped by the actions of prior Superintendents of In-

surance, upon which your petitioner relied and incurred obligations.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Court of Appeals for the District of Columbia, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 8018, NATIONAL HOSPITAL SERVICE SOCIETY, INC., Appellant, vs. ALBERT F. JORDAN, SUPERINTENDENT OF INSURANCE, GOVERNMENT OF THE DISTRICT OF COLUMBIA, Appellee, and that the said judgment of the United States Court of Appeals for the District of Columbia may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

NATIONAL HOSPITAL SERVICE SOCIETY, INC.

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